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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,075	12/07/2001	Shigemi Mashino	1131-0461P	8580

2292 7590 08/05/2003

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EXAMINER
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WALLS, DIONNE A

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 08/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/005,075

Applicant(s)

MASHINO ET AL.

Examiner

Dionne A. Walls

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 May 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All   b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2 and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okumoto (US. Pat. No. 4,635,648) in view of either JP 5-70422 or JP4-73992.

Okumoto discloses a shredded tobacco supply apparatus of a cigarette manufacturing machine comprising a shredded tobacco feeding apparatus (corresponding to the claimed "tobacco feeder"), said tobacco feeding apparatus including a storage reservoir 14 (corresponding to the claimed "reservoir stored with shredded tobacco"), an endless pin belt 17 or 24 (corresponding to the claimed "ascending conveyor capable of receiving the shredded tobacco from said reservoir and transferring the shredded tobacco upward"), an area where tobacco shreds 25 drift (corresponds to the claimed "deposition chute capable of receiving the shredded tobacco from said ascending conveyor and depositing the received shredded tobacco"), pin drum 27 (corresponding to the claimed "feed roller unit....for delivering the shredded tobacco from said deposition chute"; Note: said feed roller would be structurally *capable* of delivering tobacco at a constant supply rate), winnower 29 (corresponding to the claimed "acceleration means for accelerating the shredded tobacco delivered from said feed roller unit"), and duct 30 (corresponding to the claimed "pneumatic transportation

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means") which includes a chimney 2 for guiding the shredded tobacco and the air current toward a porous band (corresponding to the claimed "tobacco band") (col. 3, line 8 – col. 4, line 62). As apparent from figure 1, the chimney 2 inclines at an angle to the traveling direction of the porous conveyor/suction chamber 3. While Okumoto may not disclose a deposition chute including an inlet adjoining an upper end of the ascending conveyor which has a pendent passage extending straight downwardly to a lower end thereof, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the apparatus of Okumoto to include a layout such that the deposition chute and feed roller are positioned so as to allow the chute to extend in the manner claimed as a matter of design choice, since this type of arrangement is known in the tobacco art as evidenced by both Japanese references, JP 5-70422 and JP4-73992 (see figs).

Regarding claim 2, Okumoto discloses horizontal conveyor 16 disposed in such a manner as to constitute a bottom of the storage reservoir 14 (corresponding to the claimed "bottom conveyor forming a bottom wall of said reservoir").

Regarding claim 4, Okumoto discloses an air stream which is sent in under pressure through duct 30 and is changed into a uniform air stream by current plate 31 and jetted out of a hole 32 to ascend through a chimney 2 (corresponding to the claimed "jet diffuser for jetting out an air current toward the chimney"). While Okumoto may not explicitly state that the jet diffuser is capable of jetting out the air current at an angle of inclination equal to the angle of inclination of the chimney, where the claimed and prior art apparatus is identical or substantially identical in structure or composition, a *prima*

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*facie* case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430,433 (CCPA 1977). In other words, when the structure recited in the reference is substantially identical to that of the claims, the claimed functions (i.e. capabilities) are presumed to be inherent. MPEP 2112.

Regarding claim 5, as depicted in fig.1 the winnower 29 (corresponding to the claimed "acceleration means"), is a roller which is located between the pin drum 27 (corresponding to the claimed "feed roller unit") and the current plate 30/hole 32 (corresponding to the claimed "jet diffuser").

Regarding claim 6, Okumoto discloses a duct 30 (corresponding to the claimed "pneumatic transportation") which circulates the air stream (corresponding to the claimed "air current").

3. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Okumoto (US. Pat. No. 4,635,648) in view of either JP 5-70422 or JP4-73992, further in view of JP 61-224977.

This claim differs from the Okumoto modified by JP 5-70422/JP4-73992 reference because of language that recites the apparatus comprises a plurality of tobacco feeders, the respective chimneys being arranged adjacent to one another in the traveling direction of the tobacco band. However, JP 61-224977 discloses a shredded tobacco supply apparatus having such arrangement (see figs. 2,3). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to arrange several feeders adjacent one another, as depicted in JP 61-224977, in order to provide for more than one type of tobacco filler material for the finished tobacco product.

***Response to Arguments***

4. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

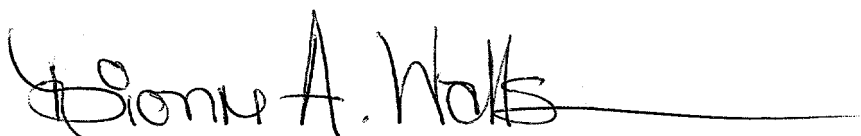
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne A. Walls whose telephone number is (703) 305-0933. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (703) 308-1164. The fax phone

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numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

A handwritten signature in black ink that reads "Dionne A. Walls". The signature is written in a cursive style with a long horizontal line extending to the right.

Dionne A. Walls  
August 4, 2003